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WESTERN DISTRICT OF WASHINGTON  
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UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

WICKFIRE, LLC,

Plaintiff,

v.

TRIMAX MEDIA, INC., *et al.*,

Defendants.

**MS 15 051** RSL  
No.

MOTION TO QUASH OR MODIFY  
SUBPOENA

Related Case: U.S. District Court for the  
Western District of Texas at Austin Case  
No. 1:14-CV-34-SS

NOTE ON MOTION CALENDAR:  
Friday, May 22, 2015

**I. INTRODUCTION**

BrandVerity, Inc., a Washington corporation ("BrandVerity"), a small entity based in Seattle, Washington, was served with a subpoena for documents and a Rule 30(b)(6) deposition, meant in principal part to authenticate documents produced by BrandVerity, on or about April 14, 2014 (the "Subpoena"). The Subpoena was issued by defendant Trimax Media, Inc. ("TriMax") in the matter of *Wickfire, LLC v. TriMax Media, Inc., et al.*, U.S. District Court for the Western District of Texas at Austin, Case No. 1:14-CV-34 (the "Texas Action"). BrandVerity is not a party to the Texas Action.

In this motion, BrandVerity asks that the Court quash or substantially modify the Subpoena, which is returnable as to documents on May 8, 2015, and compels attendance of a Rule 30(b)(6) designee of BrandVerity at a deposition scheduled for May 20, 2015.

SEA 70862

1 The Subpoena places an undue burden on BrandVerity in several respects. First,  
 2 several of the document requests set forth in the Subpoena are vague and leave BrandVerity to  
 3 guess as to what is requested. Second, without clarification or limitation, the Subpoena would  
 4 require BrandVerity to expend Herculean efforts to search for potentially responsive  
 5 materials. Third, the Subpoena requires compliance by May 8, 2015, which is not enough  
 6 time for BrandVerity to search for records, let alone obtain consent or otherwise notify  
 7 customers whose confidential information would be disclosed.

## 8 **II. BACKGROUND**

9 The motion is based upon the Declaration of David Naffziger submitted herewith. Mr.  
 10 Naffziger is president and chief executive officer of BrandVerity. BrandVerity incorporates  
 11 Mr. Naffziger's declaration as its statement of background facts.

## 12 **III. ARGUMENT**

13 Rule 45(d)(1) of the Federal Rules of Civil Procedure require counsel "responsible for  
 14 issuing and serving a subpoena [to] take reasonable steps to avoid imposing undue burden or  
 15 expense on a person subject to the subpoena. The court for the district where compliance is  
 16 required must enforce this duty and impose an appropriate sanction—which may include lost  
 17 earnings and reasonable attorney's fees—on a party or attorney who fails to comply."

18 Rule 45(d)(3) requires this Court (where compliance is required) to "quash or modify  
 19 a subpoena that: (i) fails to allow a reasonable time to comply; ... (iii) requires disclosure of  
 20 privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a  
 21 person to undue burden."

22 The Subpoena does all three of these things. First, it does not allow BrandVerity, with  
 23 its limited resources, a "reasonable time to comply." Second, it requires disclosure of  
 24 confidential information of BrandVerity's customers without allowing a reasonable time for  
 25 BrandVerity either to obtain consent or otherwise provide notice to its customers such that  
 26 they have an opportunity to intervene and object. Third, both because of its vagueness and  
 27 sweep, the Subpoena imposes an undue burden upon BrandVerity, a small company, to

1 produce potentially substantial amounts of materials. The specifics of these objections are  
2 detailed in Mr. Naffziger's declaration submitted herewith.

3 **IV. CONCLUSION**

4 For the foregoing reasons, BrandVerity asks this Court to quash the Subpoena in its  
5 entirety or to modify the Subpoena (a) to a narrow, defined scope; and (b) to allow  
6 BrandVerity at least sixty (60) days in which to respond to whatever remains of the Subpoena.  
7 BrandVerity further seeks an appropriate sanction against TriMax and its counsel for violation  
8 of Rule 45(d)(1) in an amount representing at least BrandVerity's attorneys fees and costs  
9 incurred, proved by subsequent motion. Finally, BrandVerity seeks compensation for the  
10 time required by its employees to search for and produce the materials sought.

11 DATED this 7th day of May, 2015.

12 Law Offices of Alan S. Middleton PLLC  
13 Attorneys for BrandVerity

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**CERTIFICATE OF SERVICE**

I, Alan S. Middleton, certify that on May 7, 2015, I caused a copy of the foregoing to be served upon the following by the means indicated. Where U.S. Mail is indicated, the copy was mailed addressed as follows, postage prepaid.

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DATED this 7th day of May, 2015.

/s/ Alan S. Middleton  
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